IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 319 OF 2006

MR. CAETANO ROSARIO D' SOUZA. ....Appellant

Versus

MR. FRANCISCO X. D' SOUZA AND 2 ORS., ...Respondents

Mr. Ajit R. Kantak, for the Appellant.

Mr. C.A. Coutinho For R-1 & 2
Mr. A.F. Diniz, Advocate for R.3.

Coram:- S.A.BOBDE, J.

Date:- 7th March, 2007

P.C.:

This is an appeal against the judgment by the Civil Court dismissing the plaintiff's suit by virtue of Section 8A of the Mundkars Act of 1975 read with Section 31(2) of the Mundkars Act. The two sections read as follows :-

" 8A. Declaration of right. - If any person is entitled to any right under this Act he may move the Mamlatdar by an application for a declaration for such a right.

.....

31(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector or the Government or the Administrative tribunal and no order passed by such authority under this Act shall be questioned in any Civil or Criminal Court. "

2. Admittedly even according to the learned counsel for the appellant

who filed the suit, the plaintiff claims a right to compensation received by his brothers upon surrender of mundkarship of their mother. In other words, according to the plaintiff his mother was a mundkar. His brothers have surrendered mundkarship to the bhatkar and have received compensation for the said surrender. The plaintiff claims that by virtue of being the brother, he is entitled to a share in the compensation.

3. In my view, this is clearly a right arising out of the relationship of mundkar and bhatkar and whether the plaintiff is entitled to a share in the compensation upon surrender of such right, as an heir of his mother, is a right which is required to be determined by the Mamlatdar by virtue of Section 8A.

4. In my view I am in agreement with the view of the learned Additional Civil Judge, S.D. that the jurisdiction of the Civil Court is barred by virtue of Section 31(2) of the Mundkars Act. Needless to add that the plaintiff shall, by virtue of this view, be entitled to approach the Mamlatdar in accordance with law.

There is no merit in this appeal which is dismissed.

S.A.BOBDE, J.

sl.